Kerala Gazette No. 22 dated 31st May 1983.
PART IA

GOVERNMENT OF KERALA

Election Department

NOTIFICATION

No. 1229/ELI/83/Elec. *Dated, Trivandrum,* 19*th March* 1983.

Notification No. 82/KL-LA/5/82 dated 21-2-1983 of the Election Commission of India is published.

By order,
J. S. JESUDHASAN,
Chief Electoral Officer and Special Secretary to Government.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan,
Ashok Road,
New Delhi-110 001,
Dated, 21*st February* 1983.

NOTIFICATION

No. 82/KL-LA/5/82.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgment of the High Court of Kerala at Ernakulam dated 17th November, 1982 in Election Petition No. 5 of 1982.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

The Honourable Dr. Justice T. Kochu Thommen

Wednesday the 17th November 1982/26th Karthika 1904

ELECTION PETITION No. 5 OF 1982

Petitioner: —

T. T. Mathew, Thyvelikkakath Vettakkal P. O., Shertallay.
By Advocates, M/s K. J. Joseph, V. I. Mani, P. J. Joseph.

Respondents:—

1. Smt. K. R. Gouri.
   Thypparambu Chathanad.
   Alleppey.
2. Natarajan Vydian,
   Valliath House,
   Dlavaippu,
   Shertallay.

By Advocate M/s S. Narayanan Poti, S. Sankara Subban, B. V. Deepak.
This Election Petition having been finally heard on 5-11-1982 and having stood over to this day for consideration this court delivered the following:

JUDGEMENT

The petitioner prays for a declaration that the election of the 1st respondent to the Kerala State Legislative Assembly from No. 97 Aroor Assembly Constituency was void and that the petitioner has been duly elected. In the election held on 19-5-1982, the result of which was declared on the following day, the petitioner and the 1st respondent were the principal contestants. The petitioner was the candidate of the Kerala Congress (J) and the 1st respondent was the candidate of the Communist party of India (Marxist). The 1st respondent secured 41,694 votes while the Petitioner secured 35,753 votes. The 1st respondent thus got 5941 votes more than the petitioner.

2. The principal allegations of the petitioner are: The 1st respondent and her election agent and other persons with the consent of the 1st respondent and her election agent obtained the assistance of government officers for the futherance of the prospects of the 1st respondent's election. It is further alleged that undue influence was brought to bear by the election agent of the 1st respondent upon 63 Harijan families to get their votes in favour of the 1st respondent. By such conduct the 1st respondent, her election agent and other persons with the consent of the 1st respondent and the election agent have committed corrupt practice within the meaning of Section 123 (2) and (7) of the Representation of the People Act, 1951. (the 'Act'). The election of the 1st respondent is alleged to be void on

the grounds mentioned under Section 100 (1) (b) and (d) (ii) and (iv). It is stated that the 1st respondent who filed her nomination before the Returning Officer, Alleppey, at 11.00 a. m. on 24-4-1982 had begun her election campaign long prior to 17-4-1982. The petitioner who filed his nomination on 22-4-1982 had also commenced his campaign long before that date. The 1st respondent who was a Minister in the Government which resigned in October 1981 had represented the Aroor Constituency for a number of years. As a Minister she helped the formation of a Broiler Club at Pallithode in Shertallay taluk in April 1981, under the auspices of four voluntar women's associations called the fishermen's Vanitha Samajam, Pallithode, Brech Blossom Vanitha Samajam, Pallithode, Deepti Mahilasamajam, Manakkodam, and Little Flower Vanitha Samajam, Azheekal. All the four associations function within the Aroor Assembly Constituency. On 24-4-1982 the first anniversary of the Broiler Club was celebrated. Wide Publicity had been given for that meeting. Notices were distributed showing that there would be a seminar on the afternoon of the 24th April 1982 between 2 and 5 p. m. at St. Sebastian's High School, Pallithode. It was to be presided over the P. C. C. Pillai, Assistant Director, Animal Husbandry, Alleppey and inaugurated by E. C. Francis, Deputy Director, Animal Husbandry. The speakers at the seminar were shown to be T. M. Vincent, Senior Veterinary Officer, Alleppey, S. Bahuleyan, Executive Officer, Thuravoor Panchayat, Rev. Father George Karumanchery, V. K. Ramesan, Veterinary Surgeon and P. N. Sivadasan, the B. D. O., Pattanakkad (who happened to be the Assistant Returning Officer). The notice further stated that at 5.15 p. m. on the same day a public reception would be accorded to the 1st respondent at the ferry, and at 5. 30 p. m. she would preside over a public meeting. The speakers at the Public meeting would be M. Justin, Alleppey, Bhairny Sadasivan, K. Muhammadali, the President of the Kuthiyathodu Panchayat, K. K. Dinesan, M. K. Bhanubimban, N. P. Thandar, M. N. Kurup (Desabhimani) and P. Bhaskaran. The meeting was to be followed at 9 O'Clock by a 'Kathaprasangam' by Manakkodam Mohanan. As a result of the wide publicity given to the meetings, a large gathering of no less than 5000 voters had collected at the St. Sebastian's High School. Although styled as a seminar, it was in fact a large meeting. It started at 3. 30 p. m. with P. N. Sivadasen, B. D. O., Pattanakad, as the chairman. The meeting was inaugurated by E. C. Francis, Deputy Director of Animal Husbandry, Alleppey. S. Bahuleyan and V. K. Ramesan were two of the speakers. These four officers of the Kerala Government eloquently spoke of the valuable contribution made by the 1st respondent to the Broiler Club as well as to the people of the area whose women have found employment opportunities through the activities of the Club. They also spoke of the 1st respondent's candidature in the ensuing election, and requested the voters present to vote for her in order that she could continue to make her contribution to the constituency. During the meeting the B. D. O., Sivadasan announced over the mike the arrival of the 1 st respondent and her election agent Kuthiathode Bhasi at Pallithode Kadathu and requested all persons present at the meeting to move to the Kadathu (ferry) to extend a proper reception to the 1st respondent.

The audience thereupon moved to the Kadathu. The 1st respondent and Sivadasan (B. D. O.) got into the vehicle K. L. Y. 4216 and went to the meeting. Sivadasan and T. M. Vincent were two of the speakers. In their speeches these Government officers canvassed votes for the 1st respondent. The 1st respondent also spoke at the meeting requesting the persons present to vote for her in the election. On 10-5-1982 another meeting was held at Kodamthuruthu in Shertalley Taluk within the Aroor Assembly Constituency. The meeting was held for the purpose of distributing agricultural implements as gifts among the members of the Harijan Colony in the Third Ward in Kodamthuruth Panchayat. About 1,000 members of Harijan families were present at the meeting. It was presided over by the 1st respondent's election agent, Kuthiathode Bhasi, and inaugurated by K. U Salim, Junior Agricultural Officer, Kuthiathode. At that meeting the election agent of the 1st respondent, Kuthiathode Bhasi, told the audience that the agricultural implements distributed among them were gifts given by the Government of Kerala on the basis of orders passed by the 1st respondent as Minister. This was confirmed by K. U. Salim who is a Gazetted Government Officer. This was a lie, for no such order had been passed by the 1st respondent. The election agent thus exercised undue influence over the members of the 63 Harijan families to get their votes in favour of the 1st respondent and interfered with the free exercise of their electoral right. But for the corrupt practices described above, it is alleged, the 1st respondent would not have been returned in the election and the petitioner would have been duly declared to be elected. The petitioner therefore contends that the election of the 1st respondent is vitiated by reason of corrupt practices coming within Section 123 (2) and (7) read with Section 100 (1) (b) and (b) (ii) and also by reason of non-compliance with the law within the meaning of Section 100 (1) (d) (iv).

3. These allegations are denied by the 1st respondent who alone has filed a written statement. She filed her nomination paper on 24-4-1982. Her election campaign commenced only a few days after filing her nomination. The allegations of corrupt practices are untrue The anniversary of the Broiler Club, celebrated on 24-4-1982, had no connection whatsoever with her election campaign. Neither she nor her election agent had anything to do with the distribution of notices in connection with the anniversary celebration. The anniversary was celebrated by holding a seminar in the St. Sebastian's U. P. School at Pallithodu and later a public meeting at a place about a mile from the school. Less than 400 persons attended the seminar where the discussions were exclusively confined to the technical and commercial aspects of breeding and marketing broiler chickens. The seminar was limited to members of the four associations forming the Broiler Club. Neither E. C. Francis nor P. G. C. Pillai attended the seminar. The officers who attended the seminar did not speak a word about the candidature of the 1st respondent or anything at all about politics. The meeting was inaugurated by Father George Karumanchery who is himself a staunch supporter of the petitioner. Sivadasan, Ramesan and Vincent were present at the seminar solely because of their official connection with

the activities of the Broiler Club. No officer was present at the reception given to the 1st respondent at the ferry. She was not accompanied by her election agent as none had been appointed at that time. She did not travel in a vehicle from the ferry to the place of meeting. She walked to the meeting along with the others. The meeting was not addressed by either Sivadasan or Vincent. No officer was present there. It was not an election meeting and none spoke about the election or canvassed votes for her. The meeting was held solely in connection with the Broiler Club. All speeches delivered at the meeting were confined to the activities and prospects of the Club. The meeting held at Kodamthuruth on 10-5-1982 was convened by the members of the Harijan Kshema Samithi for the purpose of distributing among its members agricultural implements presented by the Government. The recipients of these gifts had been chosen long prior to the meeting. The Kshema Samithi is a non-official body. The meeting had no connection whatever with the election of the 1st respondent although it was presided over by Kuthiathode Bhasi who happened to be at that time the election agent of the 1st respondent. The allegation that the election agent told the audience that the distribution of the implements had been ordered by the 1st respondent as a Minister was totally untrue; nor was it true that Salim confirmed any such announcement. The distribution of the agricultural implements was in no way connected with the election of the 1st respondent or an exercise of undue influence over the members of the Harijan Colony. Neither the 1st respondent nor her election agent nor anyone else with the consent of herself or her election agent has committed any corrupt practice. The petitioners contention that, but for the alleged corrupt practices, he would have been elected instead of the 1st respondent is totally without any basis.

4. On the basis of the above averments the following issues were settled in the presence of counsel on both sides and after discussing the same with them:

1. Have the 1st respondent and/or her election agent committed any corrupt practice under Section 123 (2) or Section 123 (7) of the Representation of the People Act, 1951 by obtaining the assistance of Gazetted Officers for furthering the prospects of the 1st respondent's election and for canvassing votes as mentioned in paragraphs 7 to 16 of the Petition?
2. Did any officer commit an offence under section 129 of the Representation of the People Act, 1951 by furthering the prospects of the election of the 1st respondent? Did it materially affect the election of the returned candidate?
3. Did the election agent of the 1st respondent commit a corrupt practice under Section 123 (2) of the Representation of the People Act, 1951 for reasons stated in paragraphs 18 to 21 of the Election Petition?
4. Is the election of the 1st respondent liable to be declared void and/or the petitioner entitled to be declared elected?
5. What is the order as to costs?

5. *Issue Nos. 1 and 3.* The contention urged at the bar of behalf of the petitioner is that the election of the 1st respondent is vitiated by reason of corrupt practices within the meaning of section 123 (2) and (7) read with section 100 (1) (b). Although there is a reference in the Election Petition to Section 100 (1) (d) (ii) and (iv), counsel for the petitioner has rightly submitted that, in view of the total absence of evidence to support a case coming under those provisions, the petitioner does not press the grounds falling under Section 100 (1) (d). I shall therefore confine by discussions under these issues solely to the grounds covered by section 100 (b) read with Section 123 (2) and (7). I shall first deal with the alleged corrupt practice within the meaning of Section 123 (7).

6. It is submitted at the bar that persons other than the 1st respondent, or her agent have, with the consent of the 1st respondent, procured or attempted to procure the assistance of gazetted officers of the Government for the furtherance of the prospects of the election of the 1st respondent. It is stated that meetings were held on 24-4-1982 under the auspices of the four voluntary women's associations forming the Broiler Club at Pallithode in Sheetallay Taluk. The meetings were held to celebrate the first anniversary of the Broiler Club which commenced functioning with its inauguration by the 1st respondent in April, 1981. The first meeting described as a seminar in Ext. P3 notice commenced at 3 30 p. m. on 24-4-1982. At this meeting the speakers spoke eloquently not only on the technical aspects of the Broiler Club but also on the valuable contribution to the Club made by the 1st respondent as Minister and they exhorted the auidence to support her in the comming election. It was well known to the auidence that the 1st respondent was the candidate of the Left Democratic Front ("L.D.F.") in the Aroor Constituency. Although she filed her nomination only on the forenoon of 24-4-1982, her intention to do so was known to the electorate long prior to that date. Four of the Government Officers who spoke at that meeting are Sivadasan (P.W. 2), the B.D.O., Pattanakadu who was also the Assistant Returning Officer; V. K. Ramesan (P. W. 5), Veterinary Doctor; S. Bahuleyan (P. W. 5), the Executive Officer of the Thuravoor Panchayat; and E. C. Francis, Deputy Director of Animal Husbandry. The Petitioner's counsel, Shri K. J Joseph submits that since Bahuleyan (P.W. 5) is not gazetted officer, and there is no evidence to show that Francis (P. W. 9) spoke at the meeting, he does not wish to urge the contention that any corrupt practice has been committed through the assistance of these two officers. In the circumstances counsel relies upon the speeches delivered by P. Ws. 2 and 4 alone in regard to what transpired at the seminar.

7. P. Ws. 2 and 4 were declared hostile and allowed to be cross-examined by the petitioner's counsel. They have emphatically stated that their speeches at the seminar were confined exclusively to the activities of the Broiler Club. They did not say a word about the 1st respondent or about politics. P. W. 2 says that he was expected to speak on the subject of finding employment for the unemployed women and the marketing facilities for the Broiler Club. His speech was confined to that subject. P. W. 4 also says that he was asked to speak of broiler chicken and he spoke

only on matters connected with that subject. Francis (P. W. 9) categorically says that he never attended the meeting. The witnesses who have spoken on the side of the petitioner implicating P. Ws. 2 and 4 are PWs, 7, 17, 21, 22 and 23.

8. P.W. 7 is Father George Karumauchery, the vicar of the Pallithode Roman Catholic Church. He speaks of the afternoon meeting in the St. Sebastian's High School hall. He is the manager of that school. He was present at that meeting and spoke for a few minutes. He denies having inaugurated the function, although some of the witnesses, who are hostile to the petitioner, have spoken to that effect. He says that the seminar was more like a public meeting with a large audience of about 2000 people, many of whom were standing outside the hall. There was a loud speaker. The meeting was presided over by the B.D.O. (P.W.2). It was inaugurated by the Panchayat Executive Officer (P.W 5). The B. D. O (P.W.2) spoke about the activities of the Broiler Club and the valuable contribution made to it by the 1st respondent as Minister. P.W.2 said that the 1st respondent could not implement many of the schemes which she had in mind as she was no longer a Minister, but a new opportunity had come to the people to put her back in power. He asked the electors present at the meeting to work for the 1st respondent and ensure her success in the ensuing election. In cross-examination P.W. 7 admits that his sympathies were undoubtedly in favour of the petitioner.

9. P.W. 17 is Alice Dasan. She was present at the afternoon meeting in St. Sebastian's High School. There were about 3000 people of whom about 1800 were inside the hall. The B.D.O (P.W.2) eloquently supported the candidature of the 1st respondent and requested the electors to vote for her. She also says that Remesan (P.W.4) spoke in support of the 1st respondent and requested the electors to vote for her in the election. She says that while the meeting was going on, P.W 2 announced over the mike that the 1st respondent had arrived at the ferry and that all of them should go over there and receive her. This witness also says that she was told that Francis (P.W.9) spoke at the meeting, but she had not seen him before. She denies the suggestion that her husband is a supporter of the petitioner. P.W.21 (Mariakutty Angelos) fully corroborates the testimony of P.W.17. She further says she was an active supporter of the 1st respondent. She canvassed votes for her. She still supports the 1st respondent. She is happy that the 1st respondent has won the election. It is strange that she has nevertheless testified against the 1st respondent. She denies the suggestion that her husband Angelos is the Secretary of the Ward Committee of the Congress (I). P.W. 22 is Elizabath Vincent. She corroborates the evidence of P.Ws. 17 and 21. She does not however speak of Francis apparently because she came late and P.W.2 was speaking when she arrived. She says that she supported the 1st respondent in the election and that she is happy about the result of the election. Nevertheless she too has testified against the 1st respondent PW.23 is Leelamma Ferdinandez. She corroborates the evidence of P.Ws. 17, 21 and 22 on material particulars. The petitioner

(PW. 1) also speaks about the meeting. But he has no personal knowledge. His evidence is purely based on what he heard from others, and has therefore little value.

10. The four ladies who spoke in support of the petitioner spoke almost in identical terms giving rise to the impression that they had been taught to say alike. They all, with the exception of P.W. 22 who came late, say that Francis was one of the speakers, but they had not seen him before. They seem to be hesitant about Francis probably because he had already testified emphatically denying his presence at the meeting. But these ladies try to implicate PWs. 2 and 4 who admittedly were present at the meeting. These witnesses say that the meeting was attended by no less than 3000 people. It is unthinkable that before such a large audience these responsible government officers would have made the mistake of entangling themselves in irregular conduct by openly canvassing votes for the 1st respondent. Presumably these officers, among whom was the Assistant Returning Officer (P. W. 2), were well aware of the consequence of such act. Assuming that they were interested in the 1st respondent for their own good reasons and that they would have liked to support her in various ways, it is most unlikely that they would have spoken in her behalf so openly and so unwisely. According to these officer, the audience was much smaller. There were not more than 400 people and there was no mike. But the presence of about 3000 people, as suggested by the witnesses who support the petitioner, makes the alleged behaviour of the officers even more improbable. The improbability is still greater because of the loud speaker. PW. 7 is admittedly a sympathiser of the petitioner. He is 70 years of age. It is quite likely that his memory of what he heard about six months ago is no longer clear. It is also not unlikely that he is obsessed by what he has heard from the petitioner and others of matters which appeal to his sympathy.

11. Johnamma (R.W.3) is the Secretary of the Broiler Club. She was present at the meeting. She and the Presidents of the four Women's Associations together invited the speakers. She could not invite P.C.C. Pillai and Francis personally, but left notes requesting them to attend the meeting. Neither of them however turned up. She says that P W.7 inaugurated the meeting in the absence of Francis, and the B D.O. (P.W.2) presided over it in the absence of P.C.C. Pillai. There was no mike in the hall. About 300 women who were all members of the Club had attended the seminar. She made the welcome speech. She emphatically says that not a single speaker at the meeting spoke about anything other than what was relevant to the breeding and marketing of broiler chicken and connected matters. None spoke of politics or the election prospects of the 1st respondent. It is totally untrue that any one of the speakers canvassed votes for the 1st respondent. Mary (R.W.5) is the President of one of the Women's Associations. She corroborates the testimony of R.W.3. So does K. Mohammed Ali (P.W.10) who was declared hostile to the petitioner.

12. P.Ws. 17, 21, 22 and 23 support the petitioner's case about the reception accorded to the 1st respondent when she arrived at the ferry. P.W.17 (Alice Dasan) says that when she reached the ferry the 1st respondent and a few others were already there. This was on the western side of the ferry. P.W.2, the B.D.O., garlanded the 1st respondent. Then the four Presidents of the Women's Associations garlanded her. After that the first respondent and P.W.2 got into a jeep. She says that the 1st respondent, P.W.2, the driver and a person at the mike sat in the jeep. Then they all went in a procession towards the west. About 3000 people were shouting slogans. Then they turned north towards the place of the meeting. The witness however went home. Mariakutty Angelos (P.W.21) speaks likewise. She further speaks of children walking in front of the procession with lamps in their hands. Elizabeth Vincent (P.W.22) and Leelamma Ferdinandez (P.W.23) loyally corroborate what is stated by P.W.17 and P.W.21, P.W.23 further refers to an old man in the jeep. She thinks he was Kuthiathodu Bhasi. Children walked in front of the procession with lamps in their hands. She did not go to the place of meeting for it was already late. She went home.

13. P.Ws. 6 and 19 also saw the procession, but not the reception accorded to the 1st respondent at the ferry. K.A. Varghese (P.W.6) is a member of the Thuravur Panchayat and a Director of the Pallithode Service Co-operative Bank. He contested the election to the Panchayat on Congress (A) ticket in 1980. He is a member of the election committee constituted to support the petitioner. He says that he actively supported the petitioner. On 24-4-1982 he was standing in front of the Co-operative Bank with A.L. Antony (P.W.19). He saw a procession coming. There was a jeep (K.L.Y. 4216) with the procession in which sat the 1st respondent and P.W.2 There were about 2000 people in the procession. Children were carrying lamps in front of the procession (താലപ്പൊലി). He and A.L. Antony (P.W.19) followed the procession and went to the public meeting.

14. A. L. Antony (P.W.19) is a Director of the Co-operative Bank and apparently a close associate of P. W. 6. But he does not admit to have any political affiliation. He says that he did not work for the petitioner in the election. However, his evidence as regards the procession is identical to what is stated by P. W. 6. He says slogans like "K. R. Gowri Zindabad" and "Marxist Party Zindabad" were shouted by the people. Unlike the other witnesses, he speaks of the actual words of the slogans.

15. The 1st respondent (R. W. 1), R. W. 3 and R. W. 5 speak of the reception. R. W. 1 says that she went to the ferry by her K. L. A. 5775. She crossed over in a boat. The Presidents of the four Women's Associations received her and garlanded her. There was no government officer present at the reception. She pointedly denies the presence of the B. D. O. (P. W. 2), T. M. Vincent (PW. 3) and Ramesan (P.W. 4). She says that there was no vehicle. She denies the allegation

that she travelled with the B. D. O. (PW. 2) in a jeep. She walked along with the procession. There were about 500 people in the procession. But not a single government officer was seen anywhere there. Although the petitioner has alleged that the 1st respondent travelled in a jeep K. L. Y. 4216, neither the owner nor the driver of the vehicle has been cited as a witness. Their names have not been even mentioned in the petition. The witnesses speak of 'thalappoli' and fire-works. But the petitioner has not mentioned them in the election petition. R. W. 3 says that when they received news of the 1st respondent's arrival at the ferry, the seminar was stopped and the officers went away. The members of the Brolee Club went to the ferry. Not a single officer was present there. The 1st respondent was taken in a procession after she was garlanded. R. W. 5 was one of the presidents who garlanded the 1st respondent. She says that there were about 400 people. There were no fire-works or children carrying lamps in their hands as alleged. They all walked in a procession to the meeting place. They reached there at about 7.00 p. m.

16. The meeting at Chappakkadavu is spoken to by P. Ws. 6, 18 and 19 in support of the petitioner while P. W. 10 and R. Ws. 1, 3 and 5 speak to the contrary. P. W.6, K.A. Varghese, says that he and P. W. 19 reached the place of meeting at about 7 p. m. The 1st respondent presided over the meeting. She spoke of the coming election and her candidature. She asked for the the votes of the electors. The witness says that she was followed by T. M. Vincent, the Senior Veterinary Officer, Alleppey (P. W. 3) who made an ardent plea to the electors to vote for her. After that the B.D.O., Sivadasan (P. W. 2) spoke requesting the voters to vote for the 1st respondent. Mohammed Ali (P. W. 10) and Justin also spoke at the meeting to the same effect. P. W. 19, A. L. Antony, speaks almost identically as P.W. 6. Betty Augustine, P. W. 18, is a social worker and a member of the Panchayat Committee. She contested as an independent candidate. She was opposed by the candidate of the Congress (U) who had the support of the C.P.I. (M) party. She says that she has all her sympathies for Congress (I), although she has no party politics. On 24-4-1982 she came from Alleppey by bus and alighted at the ferry. She had to go via Chappakkadavu, to her house. When she reached Chappakkadavu, she saw the meeting. The 1st respondent presided. T. M. Vincent (P. W. 3) was speaking. He said that the 1st respondent had just submitted her nomination as a candidate. She had brought immense benefits to the people of the locality. It was therefore the responsibility of the electorate to support her in the election. After him, the B. D. O. (P. W. 2) spoke. He also exhorted the people to vote for the 1st respondent. It was then about 7. 45 p. m. and she went home. Four or five days later she informed the petitioner about the meeting. She says that her son Shaji was with her at that time. She admits that Shaji has some political connections, but she does not know which party he belongs to. It is strage that P. W. 18 who is a social worker and a member of the panchayat Committee, having won the election with the supprot of parties other than congress (U) and C.P.I. (M), is not aware of the party with which her son is affiliated, although she knows that

he is politically connected. She says "[illegible]." I think she speaks less than the whole truth when she denies knowledge of her son's political connections. She herself is a sympathiser of the Congress(I). It is quite likely that she was willing to support the petitioner's cause even at the expense of an aspect of the whole truth. As I stated earlier, it is incredible that P.Ws. 2 and 4 would have so openly canvassed for the Ist respondent even if they were inclined to support her for their own reasons. Just as it was unsafe for the officers to canvass votes for the Ist respodent at the seminar, where there were, according to the petitioner, about 3000 people, so was it even more unsafe for them to indulge in such objectionable conduct at a public meeting where no less than 4000 people were alleged to be present. The evidence of P.W.6 and 18 cannot be said to be disinterested testimony, for admittedly they were supporters of a party which strongly opposed the Ist respondent. The evidence of P.W.19 who is a close associate of P.W 6 does not seem to be any more credible.

17. K. Mohammed Ali (P.W.10) who was declared hostile to the petitioner was one of the speakers at the meeting at Chappakkadavu. He fully supports the testimony of R.W.1, R.Ws.3 and 5 also corroborate the testimony of R.W.1.

18. It is strange that the petitioner did not make any complaint against the conduct of the government officers.

The petitioner was well aware of the speeches stated to have been made by them. He was informed of what transpired at the meetings in a few days thereafter. If he had made a written complaint to the Returning Officer or any other authority mentioned under the Act, he would have had the benefit of contemporaneous documentary evidence to corroborate what his supporting witnesses have spoken to. In the present case the petitioner relies solely upon the oral testimony of his interested and partisan witnesses. Such evidence has to be viewed with the greatest caution. As stated by the Supreme Court:

> "......Where the election petitioner seeks to prove charge by purely partisan evidence consisting of his workers, agents, supporters and friends, the Court would have to approach the evidence with great care and caution, scrutiny and circumspection, and would, as a matter of prudence though not as a rule of law, require corroboration of such evidence from independent quarters, unless the Court is fully satisfied that the evidence is so credit worthy and true, spotless and blemishless, cogent and consistent, that no corroboration to lend further assurance is necessary."

(D.Venkata Redddy V.R. Sultan—A.I.R. 1976 S.C. 1599, 1604)

> "Oral testimony, therefore, will have to be judged with the greatest care and an electoral victory cannot be allowed to be nullified by a mouthful of oral testimony without contemporaneous

assurance of a reliable nature from an independent source. The matter would have been different if there had been an immediate written complaint to the Returning Officer against Kanhaiyalal as had been made in the case of his workers. An election dispute is not a private feud between one individual and another. The whole constituency is intimately involved in such a dispute. Shaky and wavering oral testimony of a handful of witnesses cannot still the dominent voice of the majority of an electorate."

(emphasis supplied)

(Kanhaiyalal v. Mannalal—A.I.R. 1976 S.C. 1886)
(See also Rahim Khan v. Khurshid Ahmad—A.I.R. 1975 S.C. 290; D Venkata Reddy v. R. Sultan—A.I.R 1976 S.C. 1599, para. 58; Lakshmi Raman Acharya v. Chandran Singh—(A.I.R 1977 S.C. 587)

19. The averments in the election petition are not accompanied by the material particulars. Although the petitioner was well aware of what the officers are alleged to have said, he has not stated in the election petition a gist of their speeches. On the other hand he has only made certain general allegations about the speeches made by those officers, and seems to depend upon the witnesses to develop the details. This shows that at the time of preparing the election petition the petitioner had no knowledge of the exact words spoken to by the officers. As stated by the Supreme Court in K M. Mani v. R J. Antony (A.I.R. 1979 S.C 234):

"An allegation regarding the commission of a corrupt practice at an election is a very serious matter not only for the candidate but for the public at large as it relates to the purity of the electoral process. Where therefore the allegation relates to the charge that a candidate obtained the assistance of a police officer for the purpose of addressing a meeting on the eve of the poll and exhorting those present to work for his victory, it is reasonable to expect that, wherever possible, a transcript of his speech shall be made available to the Court in support of the allegation. Besides furnishing the precise material relating to the allegation to the election Court, it has the advantage of giving the respondent an opportunity of meeting a precise allegation. But it may be that this may not be possible in a given situation. In that case it will be reasonable and fair to expect that the election petitioner will produce a contemporaneous record of the points that were made in the speech, or at least its substance." (Para. 22)

".....the onus of proving the commission of a corrupt practice is not discharged on proof of mere preponderance of probability as in a civil suit, and it must be established beyond reasonable doubt by evidence which is clear and unambiguous......while consent may be inferred from circumstantial evidence, the circumstances must point

unerringly to the conclusion and must admit of no other explanation, for a corrupt practice must be proved in the same way as a criminal charge." (Para. 40).

(emphasis supplied).

20. The corrupt practice alleged in regard to the conduct of the gazetted officers of the Government at the meetings and the reception is based on section 100(1)(b) read with section 123 (7). Section 100(1)(b) reads:

"100. Grounds for declaring election to be void—(1) Subject to the provisions of subsection (2) if the High Court is of opinion—

.. ..

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

.. ..

the High Court shall declare the election of the returned candidate to be void."

For the purpose of section 100(1)(b) the corrupt practice must have been committed by a returned candidate or his election agent or by any other person with the consent of the returned candidate or his election agent. The allegation is that corrupt practice was committed by the organisers of the meetings by procuring the assistance of the Government officers for the furtherance of the prospects of the election of the 1st respondent. For Section 100(1)(b) to apply the corrupt practice alleged must have been committed by these persons with the consent of the returned candidate or his election agent. There is no allegation that any consent of the election agent had been obtained. The allegation is that the organisers of the meeting had the consent of the returned candidate. It is alleged that the meetings were arranged at the behest of the 1st respondent. However, there is no evidence whatsoever to suggest that the meetings were arranged at the behest. It is true that she was invited to the meeting. She accepted the invitation. But not a single witness has spoken to the effect that the meeting were arranged at her instance. There is no evidence whatsoever to suggest that she wanted those meetings arranged, or that she had given her consent to obtain the assistance alleged to have been rendered by the officers by their speeches. Assuming that the two officers spoke at the seminar as suggested by P.W. 7, there is still no evidence whatever to indicate that R. W. 1, who was not present, had information of what they were going to speak at the seminar or that she had given her consent to

such speeches being made. In the absence of such evidence, section 100(1)(b) will not be attracted. Section 123(7) reads;

"123. *Corrupt practices.*—The following shall be deemed to be corrupt practices for the purposes of this Act:—

.. ..

(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or by any other person with the consent of a candidate or his election agent, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person in the service of the Government and belonging to any of the following classes, namely :—

(a) gazetted officers;

.. ..

21. The definition of corrupt practice within the meaning of Section 123 (7) is not satisfied until it is proved that the candidate or his agent had consented to what has been done by any other person. I am of the view that, insofar as the seminar was concerned, there is no evidence whatever to indicate that the 1st respondent had consented to any person obtaining the assistance of the officers. I am also of the view that the evidence adduced by the petitioner as to what transpired at the seminar is not credible.

22. As regards the allegation regarding the part played by P. W. 2 at the reception, I am of the view, as indicated earlier, that there is total lack of credible evidence to show that P. W. 2 was present at the reception. I am also of the view that there is no reliable evidence to support the petitioner's case that P. W.2 or P. W. 3 was present at the public meeting at Chappakadavu. I have already stated that in the absence of any independent corroborating evidence; the testimony of P.Ws. 6, 18 and 19 cannot be relied upon. The petitioner has not succeeded in proving beyond reasonable doubt that any officer was present at the reception or the public meeting.

23. Consent can be proved either by direct or circumstantial evidence. But consent must be proved before the act of a person other than an election agent is ascribed to returned candidate. In the present case there is no evidence whatever to hold the 1st respondent guilty of the corrupt practice alleged within the meaning of Section 123 (7).

24. The petitioner has further alleged corrupt practice within the meaning of Section 123 (2). This Section reads:

"123 *Corrupt practices.*—The following shall be deemed to be corrupt practices for the purposes of this Act:—

.. .. ..

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right;

Provided that...... .. .."

The allegation is that undue influence was brought to bear upon the members of the Harijan Colony at Kodamthuruth by distribution among them agricultural implements by way of gift from the Government of Kerala. It is alleged that at a public meeting held on 10-5-1982, the election agent of the petitioner, P. A. Bhaskaran Nair, *alias* Kuthiathodu Bhasi (R.W. 2), told the audience that the implements distributed among them were gifts from the Kerala Goverument on the basis of orders passed by the 1st respondent while she was a Minister. This according to the petitioner was an untrue statement, for, the implements were distributed under a scheme financed by the Central Government. It is alleged that K. V. Salim, Jr. Agricultural Officer, Kuthiathode who inaugurated the function confirmed the statement of R.W.2.

25. P.Ws. 8, 16 and 14 speak to the petitioner's case. P.W. 8. is K. Chellappan. He is a member of the Harijan colony at Kodamthuruth. He says that R.W.2 is the President of the Harijan Kshema Samithi. About 9 days before the election, he received certain agricultural implements at a meeting held on 10-5-1982 at about 4.30 p m. Salim, the Junior Agricultural Officer at Kuthiathode, inaugurated the function. The petitioner's election agent (R.W.2) presided. About 100 people were present at the meeting. Agricultural implements were distributed among 65 families. R.W. 2 in his speech stated that the 1st respondent passed an order as Minister in 1980 on the basis of which the implements were being distributed. He exhorted the audience to support the 1st respondent in the election. The witness was glad when he heard the speech. He worked for the 1st respondent among the members of the Harijan community and voted for her. He would not have done that had it not been for the speech made by R W.2. A few days after the election he went to the Block Office at Pattanakadu where he met Rajagopalan who is a Gram Sevak. Rajagopalan told him that the implements were distributed under a scheme of the Central Government, and 1st respondent was not responsible for it. It is strange that Rajagopalan was not cited as a witness for the petitioner. Nor has the petitioner taken steps to examine Salim, although his name appears in the witness list. The witness admits that he is a worker of the Congress (I) Party, and that as such he was bound to support the petitioner who was sponsored by the U.D.F. He says that he would not have disobeyed his party and supported the 1st respondent but for what he heard from R.W.2. Now he testifies against her for the sole reason that what R.W. 2 said was untrue. A person with such flexible loyalties must be viewed with caution. He is what Krishna Iyer J. calls the "turn-coat type". (A.I.R 1975 S.C. 290). The evidence of this witness is far too artificial to be accepted.

26. P.W. 16, P. P. Varghese, lives at Kuthiathodu, about 1¼ k. m. from Kodamthuruth. He went there in search of a painter exactly when the meeting was in progress. He heard R.W. 2 talking of the persecution of Harijans in North India and how well they were protected in Kerala by the L. D. F. Government. He corroborates the testimoney of P. W. 8 as to what R. W. 2 spoke regarding the gifts. P. W. 16 is a member of the K. S. R. T. C Conductor's Union and as such he must have had strong views on political matters, although he says that he has no affiliation with any particular party. His chance presence at the meeting appears to be rather strange. I am not much impressed by the testimony of this witness.

27. K. V. Solomon (P. W. 14) is a resident of Kodamthuruth. He claims to have heard the speech of R. W. 2, and the repeats what has been spoken to by P. Ws. 8 and 16. This witness is the Congress (I) Mandalam Secretary at Kodamthuruth. He says he reported the matter to the petitioner after the election. But he did not tell him about the enquiries made by him at the agricultural office. He did not make any complaint about the falsehood propagated by R. W. 2. He did not tell anybody in the Harijan Kshema Samithi about it. He says that he obtained the correct information about the gifts from a lady at the agricultural office. The name of the lady has not been stated. He did not tell the petitioner her name. His sympathies are naturally with the petitioner on account of his strong political affiliations. In the circumstances I do not find the evidence of this interested witness convincing.

28. The petitioner did not cite T. Mani who is the General Secretary of the Harijan Kshema Samithi. He cited its convener K. N. Thankappan as a witness but did not examine him. The evidence of the office-bearers of other members of the Samithi would have been far more reliable than that of a chance witness like P. W. 16 or witnesses like P. Ws. 8 and 14, who cannot be said to be politically unbiased. For the reasons which I have stated earlier in connection with what transpired at the meetings held on 21-4-1982, the testimony of these witnesses who speak to the meeting held on 10-5-1982, unsupported by any corroborating documentary or other independent evidence does not inspire confidence.

29. The allegation as regards corrupt practice within the meaning of Section 123 (2) is contained in paras 19 to 21 of the election petition. The allegation is in relation to an alleged gift. It should normally have been pleaded with reference to section 123 (1) and not (2). But subsection (1) is not relied on by the petitioner. In fact the specific plea is in relation to undue influence and not bribery, and sub-section (2) of Section 123 is specifically mentioned. The contention is that the false statement made by R. W. 2 regarding the gift is an undue influence. No undue influence can however arise from a gift. A statement about gift, even if false, can only be an inducement coming within the meaning of subsection (1). It is not an undue influence within the

meaning of sub-section (2), which refers to an influence inhibitive of the free exercise of any electoral right by reason of fear of physical or monetary or social or spiritual injury. A gift offered, even if on false premise, cannot be construed to be an undue influence within the meaning of subsection (2) which does not take in matters covered by subsection (1).

30. Be that as it may, whichever be the provision in terms of which the plea is understood, there is no reliable evidence in the present case, to support the petitioner's contention that R. W. 2 spoke the words attributed to him. R. W. 2 has in his evidence categorically denied the allegation. He has also denied that he was present at the Chappakkadavu meeting on 24-4-1982 as be had left Kerala for Delhi on that day.

31. The allegation of corrupt practice must be proved beyond resonable doubt. As stated by the Supreme Court:

> "A charge of electoral corrupt practices being of a quasi-criminal charactor, the onus on an election petitioner is heavy as if in a criminal charge. The allegations must be established beyond reasonable doubt to the satisfaction of the court by cogent and unimpeachable evidence."
>
> (*Kanhaiyalal* v. *Mannalal*—A.I.R. 1976 S. C. 1886, para 20)
>
> "it is well settled that an allegation of corrupt practice must be clearly pleaded in the petition and the particulars given in the schedule. Corrupt practice being in the nature of a fraud, it is not permissible to plead one kind of fraud, or one kind or corrupt practice and prove another though they may be interconnected."
>
> (*N. C. Zelliang* v. *Aju Newmai*—A.I.R. 1981 S.C. 8, para 16 See also A. I. R. 1975 S. C. 290 ; A. I. R. 1978 S. C. 1162)

Tested in the light of these prinicipIes, the allegations contained in the petition concerning corrupt practices within the meaning of Section 123 (2) and (7) read with Section 100 (1) (b) must fail. The petitioner has failed to prove any one of the allegations cotained in the petition. The evidence of P. W. 1, has little value, for he relies entirely on what he has been told by others. The evidence of the other witnesses who support him is so artificial and improbably that no reliance can be placed on what they say. In the circumstances the corrupt practices alleged by the petitioner have not been proved beyond reasonable doubt. Accordingly issues Nos. 1 and 3 are found against the petitioner.

32. *Issue No.* 2.—For the reasons stated by me under Issues Nos. 1 and 3, Issue No. 2 must be found against the petitioner. I do so.

33. *Issues Nos.* 4 *and* 5.—The petitioner is not entitled to the declarations sought. There is no evidence to prove that the election of the 1st respondent is void for any of the reasons alleged by the petitioner The petitioner has failed to prove any corrupt practice against her or her election agent. None of the allegations contained in the petition stands proved.

> "The valuable verdict of the people at the polls must be given due respect and candour and should not be disregarded or set at naught on vague, indefinite, frivolous or fanciful allegations or on evidence which is of a shaky or prevaricating character".

(*D. Venkata Reddy*) v. *R. Sultan*—A.I.R. 1976 S. C. 1599, para 3.)

34. In the circumstances the petitioner is not entitled to any relief in this proceeding. The election petition is accordingly dismissed. The petitioner shall pay to the 1st respondent a sum of Rs. 2,000 as her costs, towards which the amount deposited by the petitioner in this court shall be adjusted.

35. The Registrar shall immediately intimate the substance of this decision to the Election Commission and the Speaker of the Kerala Legislative Assembly and shall thereafter send as urgently as possible an authenticated copy of this judgment to the Election Commission, as required under Section 103 of the Representation of the People Act, 1951.
17 th November, 1982.

(Sd.)
T. Kochu Thommen,
Judge.

(True Copy)

Appendix

Petitioner's Exhibits :

Ext. P1	dated 11-4-1982	Malayala Manorama Daily
„ P1(a)	„ 11-4-1982	English translation of news item appeared in the Malayala Manorama' Daily dated 11-4-1982
„ P1(b)	„ 11-4-1982	News item appeared in the 'Malayala Manorama'
„ P1(c)	„ do.	Portion of English translation of news item (Marxist leader K. R. Gouri is contesting from Aroor) appeared in the Malayala Manorama
„ P2	„ 13-4-1982	Mathrubhoomi Daily
„ P2(a)	„ do.	English translation of news item appeared in the 'Mathrubhoomi'
„ P2(b)	„ do.	New item appeared in the Mathrubhoomi in the box column titled 'Ravi' to contest from Sherthalay.

Ext. P2(c)	dated 13-4-1982	First paragraph of the news item (translated into English) titled Ravi to contest from Sherthalay.
" P2(d)	do	Last paragraph of the news item (in box column) appeared in the Mathrubhoomi'
" P3	" 21-4-1982	Notice published by the Broiler Club
" P3(a)	do.	English translation of do.
" P4	" 7-5-1982	Notice published by the Harijan Kshema Samithi, Kodamthuruthu
" P4(a)	do.	English translation of do.

Respondents Exhibits

Ext. R1	dated 23-4-1982	'Desabhimani' daily
" R1(a)	" do	English translation of news item appeared in do.
" R2	" 10-4-1982	Notice titled 'Pallithode Broiler Chicken Breeding Scheme
" R2(a)	do.	English translation of do.
" R5		Group Photo taken by Bhavana Studio, Thuravoor
" R5(a)		Negative film of do.
" R6		Flash Photo taken by Bhavana Studio, Thuravoor
R6(a)		Negative film of do.
R6(b)		Negative film.

Petitioner's Witnesses:

1. T. T. Mathew, Petitioner
2. P. N. Sivadasan
3. T. M. Vincent
4. Dr. V. K. Ramesan
5. S. Bahuleyan
6. K. A. Varghese
7. Rev. Fr. George Karumancherry
8. Chellappan
9. Dr. E. C. Francis
10. K. Mohammed Ali
11. P. A. Alexender
12. Baby John
13. K. K. Sreedharan Nair
14. K. V. Solaman
15. K. P. Sathyananian
16. P. P. Varghese
17. Alice Dasan

Pe itioner's Wetnesses :

18. Botty Augustine
19. A. L. Antony
20. V. A. Mohammed
21. Mariakutty Angelos
22. Elizabeth Vincent
23. Leelamma Ferdinandez

Respondent· Witnesses :.

1. Smt. K. R. Gouri, 1st Respondent
2. P. A. Bhaskaran Nair
3. Janamma, K. J.
4. V. E. Mohanan
5. Mary Sansillo

Costs to the 1st Respondent Rs. 2,000

By order,

(Sd.)

V. K. Rao,

Under Secretary to the Election Commission of India.